

MATTHEW D. POWERS (Bar No. 104795)

matthew.powers@weil.com

EDWARD R. REINES (Bar No. 135960)

edward.reines@weil.com

JEFFREY G. HOMRIG (Bar No. 215890)

jeffrey.homrig@weil.com

JILL J. HO (Bar No. 236349)

jill.ho@weil.com

WEIL, GOTSHAL & MANGES LLP

Silicon Valley Office

201 Redwood Shores Parkway

Redwood Shores, CA 94065

Telephone: (650) 802-3000

Facsimile: (650) 802-3100

Attorneys for Plaintiff-Counterclaim Defendant

NETWORK APPLIANCE, INC.,

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Plaintiff-Counterclaim Defendant,

v.

SUN MICROSYSTEMS, INC.

Defendant-Counterclaim Plaintiff.

Case No. 3:07-CV-06053-EDL

NETAPP'S OPPOSITION TO SUN'S *EX PARTE* APPLICATION TO SHORTEN TIME

1 Pursuant to Civil Local Rule 6-3(c), Plaintiff NetApp, Inc. opposes Sun's *Ex Parte*
2 Application to Shorten Time ("Motion to Shorten Time").

3 Sun's request to shorten time appears to be a reflexive attempt to fast-track its
4 Motion to Stay, rather than a considered approach to streamlining the issues in this case. Indeed,
5 Sun offers no persuasive basis for slicing NetApp's time to respond to the Motion to Stay nearly
6 in half, while preserving fully its own time to reply. Homrig Decl. at ¶2.¹ Although it argues that
7 this request to shorten time will "avoid unnecessary discovery," Sun provides no concrete
8 examples. Motion to Shorten Time at 2, 3. Nor could it, given that discovery related to the '211
9 patent overlaps with discovery related to the '292 patent, which is not subject to the Motion to
10 Stay and which shares the same inventors and accused products. Homrig Decl. at ¶3. Sun's
11 second purported basis – that this request will prevent the Court from "incur[ring] additional time
12 and resources construing the terms of the '211 patent" – is mooted by the Court's September 10
13 Claim Construction Order. Motion to Shorten Time at 3. Moreover, to the extent that there are
14 further claim construction proceedings – for example, follow up to the Court's request that the
15 parties meet and confer about its Claim Construction Order – such proceedings would not be
16 heard under the normal briefing schedule until after the regularly-noticed hearing on Sun's
17 Motion to Stay. Simply put, NetApp deserves a full and fair opportunity to respond to the
18 Motion, and Sun has failed to meet its burden of showing that an expedited schedule is warranted.

19 Even if the Court were inclined to expedite the schedule, Sun's proposal is
20 inequitable. Yet again, Sun seeks to advance the hearing date on a motion by dramatically
21 reducing both NetApp's time to respond and the Court's time to consider the papers, while
22 preserving its full time to reply. Homrig Decl. at 4. This is simply unfair. If the issues presented
23 by Sun's Motion to Stay were indeed as simple and straightforward as Sun claims, it could
24 advance the hearing date by waiving its Reply or by shortening the deadline for filing it.² Thus, if
25 the Court is amenable to an expedited schedule, it should advance the parties' respective briefing
26

27 ¹ All citations are to the Declaration of Jeffrey G. Homrig In Support of NetApp's Opposition to
28 Sun's *Ex Parte* Application to Shorten Time, filed herewith, unless otherwise noted.

² Indeed, Sun's attempt to preserve its full 7 days for reply belies the accuracy of this claim.

1 deadlines by an equal number of days, so that Sun bears its fair share of the burden of expediting
2 the Motion to Stay.

3 For the reasons stated above. NetApp respectfully requests that the Court deny
4 Sun's Motion to Shorten Time.

5 Dated: September 11, 2008

WEIL, GOTSHAL & MANGES LLP

6 /s/ Jeffrey G. Homrig
7 Jeffrey G. Homrig

8 Attorneys for NetApp., Inc.
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